



COMDTINST 4610.6

DEC 31 1998

COMMANDANT INSTRUCTION 4610.6

Subj: U.S. COAST GUARD FREIGHT LOSS AND DAMAGE CLAIM SYSTEM

1. PURPOSE. This instruction provides current policies, procedures, and requirements for developing factual evidence to support freight loss and damage claims. Claims are against commercial carriers for in-transit loss or damage to United States Coast Guard property. Intended users are Transportation Officers, Traffic Managers, Storekeepers, shipping and receiving personnel, and others requiring freight transportation services.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure compliance.
3. DIRECTIVES AFFECTED. COMDTINST M4610.5, Transportation of Freight, is changed to reflect new procedures for the processing of freight loss and damage claims.
4. DISCUSSION.
 - a. 49 U.S.C. 11706 (rail) and 14706 (motor) provides that a shipper who suffers damage to property in transportation in interstate commerce shall be compensated for "... the actual loss, damage, or injury to such property caused by ... the common carrier." The OFA (Office of Final Action) is responsible for filing claims against the carrier. Chapter 17 of Transportation of Freight,

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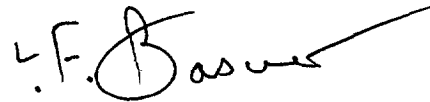
COMDTINST M4610.5, requires the reporting of transportation-type discrepancies for shipments received by Coast Guard activities when shipped by a commercial carrier and for notifying the carrier of the discrepancy in shipment.

- b. In order to ensure that monies due the Coast Guard are recovered from commercial carriers who lose or damage freight, the Coast Guard Finance Center established a freight claims section on 1 OCT 1996. The claims section is staffed by experienced claims professionals and acts as the central point for all Coast Guard freight claims. For Coast Guard claims, the OFA is the Claims Section, U.S. Coast Guard Finance Center. The Chief, Claims Section, General Accounting Branch, Accounting Operations Division, U.S. Coast Guard Finance Center, Chesapeake, Virginia, is the Freight Loss and Damage Claim (FLDC) agent for the Coast Guard and has the final responsibility to determine liability and measure of damages for recovery; initiate a claim against a carrier; conduct a reinvestigation of facts concerning a loss or damage if required by carrier protests; settle a carrier request for reconsideration; and determine the merits of a compromise offer. Also, the Coast Guard FLDC Agent ensures collections are made promptly and credited to the correct appropriation.
- c. This instruction sets forth Coast Guard policy and procedures for the prompt and accurate reporting of transportation-type discrepancies for claim action. This instruction standardizes procedures for Coast Guard transportation discrepancy reporting for claim action and supplement, and must be used in conjunction with, current editions of COMDTINST M4610.5, Transportation of Freight.
- d. The freight loss and damage claims (FLDC) system is a prescribed method for determining the commercial carrier's responsibility, whether the carrier may or may not be held liable for loss of or damage to property in shipment, and the measure of damage, as well as initiating a Standard Form (SF) 362, U.S. Government Freight Loss/Damage Claim. The system's success depends upon the prompt and accurate reporting of transportation discrepancies in shipment by the transportation officer. The Transportation Discrepancy Report (TDR) is the source document for claim action.

- d. Investigation of Discrepancies. The primary purpose of discrepancy investigation is to determine responsibility for loss or damage and establish the full actual loss to the government. The TO/TM conducts an impartial investigation free of predetermined opinions as to responsibility for loss or damage. The investigation must establish such factors as proximate cause of damage, measure of loss or damage, market value (or Federal Supply Catalog or DLA Consolidated Management Data List value), pre-shipment reparable value, salvage allowance, depreciation, inspection by the carrier or government, actual repair cost, and disposition of damaged property.
- e. Evaluating Factual Information and Evidence.
- (1) General. The TO/TM bases the determination of responsibility for loss or damage on sound and conclusive evidence compiled during the investigation and completes block 37 of the TDR to show the determination. The TO/TM enters only factual information when describing discrepancies and clearly defines the circumstances surrounding the loss or damage in the remarks section of the TDR. When facts are established from oral testimony, the person who gave the testimony must be identified by name and position. Direct statements must be quoted. When needed, the TO/TM should request assistance from the their legal office in evaluating the evidence to determine responsibility for loss or damage.
 - (2) Shipper or Contractor Responsibility. The TO/TM obtains the findings of the contract administration officer (CAO) as to shipper or contractor liability under the terms of the contract when warranted by the evidence. When this responsibility is indicated, these findings are required even if carrier liability is involved. Use the SF 364, Report of Discrepancy, for reporting, adjusting, and accounting for item discrepancies in shipments determined to be shipper or contractor responsibility (supply type discrepancies).

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- f. Clear Delivery Receipt. When the carrier holds a clear delivery receipt for goods later found to have been short or damaged, the receipt may not be construed as final since the terms of the receipt may be varied by the facts actually developed. The actual facts may be explained through the use of signed statements or affidavits made by personnel who executed such clear receipt and later discovered the shortage or damage. This way, it may be possible to prove the discrepancy did, in fact, exist at the time of delivery. Claims for in transit loss or damage are extremely difficult to sustain when a carrier has been given a clear delivery receipt. The utmost care must be exercised by transportation personnel to avoid releasing signed delivery receipts before thoroughly examining the property delivered.
7. CHANGES. Changes to this instruction will be consecutively numbered and will include reprinted pages, when necessary. Address comments and recommendations to Commandant (G-SLP).
8. FORMS. Forms referenced in instruction are available per the Catalog of Forms (COMDTINST M5213.6 series). The forms are also included in FORMS PLUS (SWII) and JETFORMS (SWIII).



L. F. BOSMA, CAPT
Director of Logistics

2. Exceptions to Rules of Carrier Liability.

a. Number of Exceptions. The almost absolute liability of a common carrier for loss or injury to goods received for carriage is subject to five exceptions. The following paragraphs describe them.

(1) Act of God. A carrier is not liable for loss of or injury to property caused by an Act of God. This is defined to be an event which could not happen by the intervention of man, or be prevented by human skill, knowledge, or foresight. It includes extraordinary floods, storms, unusual lightning, sudden tempests, severe frosts, earthquakes, tidal waves, and the like. An Act of God, as the term is known in law, is such unusual and extraordinary manifestation of the forces of nature that it could not under normal conditions have been anticipated or expected. It justifies the failure of the common carrier to perform its contract of carriage and relieves it of the liability for the loss of or injury to the property concerned. The rule, however, is not absolute. Although loss or injury to property results from an Act of God, if the carrier is negligent in avoiding or lessening the loss or damage, it is liable. For example, the rule does not apply if:

- (a) The carrier fails to obtain or ignores local reports of severe storms and brings the property into contact with the destructive force.
- (b) The event is not the immediate or only cause of the loss or damage. As an example, the carrier takes property into an area recently struck by an earthquake, ignoring reports of unsafe roads and unstable buildings and requests to remain clear of the area. If the carrier is involved in an incident which damages the property, it is liable. The earthquake was not the immediate cause of the damage.
- (c) A freezing condition occurs at a season of the year or in a climate where freezing weather is to be reasonably expected.

- (2) Act of the Public Enemy. Carriers are not liable for loss or damage caused by acts of organized military or naval forces of a nation at war with the United States. Groups such as mobs, rioters, or strikers are not considered to be the "public enemy" and losses caused by them do not fall within this exception.
- (3) Act or Mandate of a Public Authority. Common carriers are under the control of public authority to the same extent as other persons, and must equally obey the orders of properly constituted government officials. If freight is lost or damaged as a result of obedience to such orders, without any intervening fault of the carrier, the carrier will not be held responsible.
- (4) Act or Fault of the Shipper.
- (a) A common carrier is not liable for any loss or injury resulting from the act or fault of the shipper without fault on the part of the carrier. This exception to the carrier's common law liability includes every case where the loss is caused by the shipper's act, whether that act is one of negligence, misconduct, or misfortune. The rule most frequently applies to cases of loss due to defective packing and improper loading. Three elements must be present to give the rule effect. They are:
1. The shipper performed the packing or loading.
 2. There was a defect in the packing or loading.
 3. The defect was concealed from ordinary observation.
- (b) If the improper packing or loading is known to the carrier or is apparent upon ordinary observation and inspection, it is the duty of the carrier to refuse to receive the property. If the carrier, nevertheless, accepts the

- (2) The examples cited above cannot be applied if the improper lading, loading, or similar deficiency was known to the carrier or could have been apparent upon ordinary observation. If such deficiency were apparent, the carrier had a duty to reject the shipment. If the carrier accepted the deficient shipment, it may not be relieved of liability.

3. Government Liability and Responsibility.

- a. Acceptance or Rejection of Goods. Regulatory requirements for the acceptance or rejection of damaged freight are contained in Title 41 of the Code of Federal Regulations, Chapter 101, subpart 101-40-704-1(c). Coast Guard policy and requirements are contained in COMDTINST M4610.5, Transportation of Freight. Goods must not be rejected to the carrier merely because the receiver believes there is damage to the property. Property may be rejected to the carrier and claim made for its full value ONLY when it has been damaged to the extent that it has no salvage value or it is not economically repairable; that is, the cost of repairs exceed the appraised value of the repaired item.
- b. Receipt of Shipment from Carrier. Regulatory requirements for the receipt of shipments from carriers are contained in Title 41 of the Code of Federal Regulations, Chapter 101, subpart 101-40.7, Reporting and Adjusting Discrepancies in Government Shipments. Coast Guard policy and requirements are contained in COMDTINST M4610.5, Transportation of Freight.
- c. Investigation of Discrepancies. The primary purpose of discrepancy investigation is to determine responsibility for loss or damage and establish the full actual loss to the government. The TO/TM conducts an impartial investigation free of predetermined opinions as to responsibility for loss or damage. The investigation must establish such factors as proximate cause of damage, measure of loss or damage, market value (or Federal Supply Catalog or DLA Consolidated Management Data List value), preshipment repairable value, salvage allowance, depreciation, inspection by the carrier or government, actual repair cost, and disposition of damaged property.

d. **Evaluating Factual Information and Evidence.**

- (1) **General.** The TO/TM bases the determination of responsibility for loss or damage on sound and conclusive evidence compiled during the investigation and completes block 37 of the TDR to show the determination. The TO/TM enters only factual information when describing discrepancies and clearly defines the circumstances surrounding the loss or damage in the remarks section of the TDR. When facts are established from oral testimony, the persons(s) who gave the testimony must be identified by name and position. Direct statements must be quoted. When needed, the TO/TM should request assistance from the staff judge advocate in evaluating the evidence to determine responsibility for loss or damage.
- (2) **Shipper or Contractor Responsibility.** The TO/TM obtains the findings of the contract administration officer (CAO) as to shipper or contractor liability under the terms of the contract when warranted by the evidence. When this responsibility is indicated, these findings are required even if carrier liability is involved. **Use the SF 364, Report of Discrepancy, for reporting, adjusting, and accounting for item discrepancies in shipments determined to be shipper or contractor responsibility.**
- (3) **Clear Delivery Receipt.** When the carrier holds a clear delivery receipt for goods later found to have been short or damaged, the receipt may not be construed as final since the terms of the receipt may be varied by the facts actually developed. The actual facts may be explained through the use of signed statements or affidavits made by personnel who executed such clear receipt and later discovered the shortage or damage. This way, it may be possible to prove the discrepancy did, in fact, exist at the time of delivery. Claims for in transit loss or damage are extremely difficult to sustain when a carrier has been given a clear delivery receipt. The utmost care must be exercised by transportation personnel to avoid releasing signed delivery receipts before thoroughly examining the property delivered.

MEASURE OF LOSS AND DAMAGE - DETERMINATION OF VALUE

1. **General.**

- a. **Rights to Recover Money.** The Coast Guard is entitled to be paid for the actual loss of or damage to its property. The government's damages will be measured as determined by principles of law. The exact amount of loss or damage is a question of fact which must be proved with evidence. Claims for loss or damage to government property by commercial carriers are based on documented facts and firm evidence. The burden of proof is on the government to prove the loss or damage occurred while the property was in the possession of the carrier. Evidence submitted must support both the charge of carrier responsibility and the amount of the government's loss. Documentary evidence submitted to support the amount of the claim must include any incidental damage arising from the loss or damage to the property. Incidental damages are those expenses reasonably and necessarily incurred by the government to restore the property or to mitigate the damages. The actual loss for property lost or destroyed may be the market value at the time of shipment.
- b. **Property Valuation.** The term "market value" is not always applicable to government property. Some government property is not suitable for commercial or industrial use. It is valuable only for military purposes and has no comparable commercial market value. The law provides that the measure of damage for loss or damage to an article having no market value is the value of the article to the owner (14 Am. Jr. 2d, section 636, Carriers). Contracts, purchase orders, and invoices are acceptable proof of value and sometimes apply when an item moves from the manufacturer to the first government destination. However, these procurement documents are not maintained as a means of property valuation after the purchased items are placed in the federal property system. The Federal Supply Catalog uniform quotation or DLA Consolidated Management Data List for each class and type of item then becomes the authority for value. The price quotation is based on the average purchase of like items procured by DLA or the military service under contract purchases within the same general period. Price quotations for items purchased by the General Services Administration (GSA) are maintained in the GSA Stock

Catalog. These costs are usually less than open market prices due to the volume of purchases. If, for some unusual reason, value is unknown or there is doubt concerning the preshipment value of an item lost or damaged, consult the item manager (IM). The IM determines value based on consideration of original cost, its utility and use, condition and age, and extent, if any, to which it has deteriorated or depreciated. If, however, there is a continuing need for a like or similar item, and there are none available in the supply system, the value may be the estimated cost to reproduce or replace the item (including transportation cost) less allowances for preshipment condition of the property lost or irreparably damaged. Sometimes, lost or damaged property has no value other than as scrap. The property may be obsolete or have been shipped for disposal through the established property disposal channels. If the property has no value other than as scrap, that value will represent the measure of loss.

- c. Depreciation of Property. Many items of government property, although classed as serviceable (material condition code A), are actually depreciated in value at time of shipment from one site to another. When used property is lost, irreparably damaged, or damaged beyond economical repair, the question of depreciation must always be considered when determining the amount of the government's actual loss. For property in preshipment reparable condition, both depreciation allowance and average standard cost of repair may apply for computation of the actual loss. When there is a continuing need for an item and it must be replaced, the amount of loss is based on the adjusted replacement cost. Obtain it by deducting the depreciation applicable to the used item from the cost of a new like item. For property which will not be replaced, the amount of loss is determined by deducting the depreciation allowance from the original cost or the Federal Supply Catalog quotation or DLA Consolidated Management Data List under which the property was carried in the United States Coast Guard inventory. Usually, a depreciation rate is based on the service-life expectancy of an item of property. These rates should be maintained by the IM of the class of property involved. When a depreciation allowance applies, the transportation officer requests it from the IM. Depreciation allowances based on the technical knowledge of the IM will establish a sound basis for an

equitable claim. The statement of depreciation allowance must be attached to the TDR. It must show factors considered and the method used to compute the depreciation allowance. This is needed by the Claims Section to document the claim against the carrier. As applicable to the item involved, the statement should include at least:

- (1) Date of purchase and manufacturer.
- (2) Original acquisition cost.
- (3) Replacement cost of like item and source of this quotation.
- (4) Estimated or published life expectancy (if published, give the source).
- (5) Preshipment condition.
- (6) Current need to the Coast Guard.
- (7) Average standard repair cost, when an item was shipped in reparable condition.

Enclosure (8) is an example of a pre-shipment value statement.

- d. **Mitigation of Damages.** The consignee may not lawfully refuse to accept property belonging to the government just because he or she suspects damage may be present or even where the property partially damaged unless such damage is so extensive the property is beyond economical repair. Unless arrangements are made with the carrier to repair the damaged property, or to accept it and anticipate claim for its full value, the consignee must receive partially damaged property and take action to mitigate the damage where possible and practicable. 13 C.J.S., CARRIERS, section 270, states: "It is the duty of the property owner to make reasonable efforts to minimize the damages, and no recovery can be had for damage which such efforts would have prevented." A claim against the carrier represents the actual loss to the government, no more, no less. Ordinarily the actual repair costs, if reasonable and equitable, represent a proper measure of damage.

2. Property Conditions Affecting Value.

- a. New Unissued Property. When new unissued property is lost, irreparably damaged, or destroyed in transit, the actual loss to the Coast Guard may be determined from the contract or purchase order price. When the purchase price is not furnished to the consignee with the shipment, request the responsible IM or contracting officer determine the value and obtain a priced copy of the shipping document for the activity reporting the discrepancy.
- b. Serviceable Like New Property. A considerable amount of Coast Guard property, although not new, is shipped as serviceable (material condition code A). This is property that is in "good as new" condition and has not been subjected to enough use to have depreciated more than a negligible amount. It may also be property not subject to depreciation. Some items of property, such as certain aircraft engines, due to engineering improvements and modification, may appreciate rather than depreciate in value. The Coast Guard is entitled to recover the full value of such serviceable like new property, if that was its actual value, at the time it was shipped. Generally, the priced copy of the DD Form 1348-1, DoD Single Line Item Release/ Receipt Document, serves to establish both the preshipment condition and value of the lost, irreparably damaged, or destroyed property. If depreciation does not apply to the serviceable condition of the item shipped, that information must be made clear on the TDR, or be shown in the supporting documents.
- c. Serviceable Used Property. Depreciation should be considered on most serviceable used property to some extent, even though the property may still be in good useable condition and capable of performing its mission. The fact that it has actually been used an average or a considerable length of time means that its serviceability and life expectancy have been lessened. A depreciation allowance applies for claim purposes if it is lost, irreparably damaged, or destroyed. The shipper must furnish verification of the actual preshipment condition. The responsible IM must furnish the depreciation allowance statement, as outlined in Section 1, paragraph c, of this enclosure. The depreciation allowance can then be applied to the applicable Federal Supply Catalog or the DLA Consolidated Management Data List price to

determine the amount to be claimed for the item if it is not to be replaced. If the item must be replaced, and the current purchase price is more than the price under which it was carried in the federal or Coast Guard inventory, subtract the depreciation allowance applicable to the lost, irreparably damaged, or destroyed item from the cost of the replacement item to arrive at the amount to be claimed.

- d. **Reparable Property.** Property shipped in need of repair (material condition code F) also requires a finding of the actual amount of the loss. The acceptable method for determining reparable value is the Federal Supply Catalog or DLA Consolidated Management Data List value reduced by depreciation factors to a used value, which is then reduced further by the average standard or estimated repair cost to determine actual reparable value. Some property is declared reparable because of operation use (specified number of hours) and may have been in transit to a repair facility for restoration to serviceable condition at the time it is lost, irreparably damaged, or destroyed. The average cost of restoration may give the preshipment condition allowance to be used in lieu of the average cost of repair. The TO/TM must ask the IM to furnish the reparable value data or restoration costs, as applicable. The IM should furnish a statement signed by a technically qualified person, showing how the average cost of repair or restoration cost was computed and the source of that data.

REPAIR COSTS

1. General.

- a. Actual Costs. When Coast Guard property is damaged and can be repaired, damages are measured by the cost of the repair necessary to restore the property to its condition before the injury. The Coast Guard is not entitled to any portion of the cost of repair which makes the property more valuable than it was before the injury. If reparable property is damaged in transit and then repaired, the cost of any repair expense attributable to preshipment condition must be deducted from the total repair cost. As with all elements of damages, cost of repair (actual or estimated) must be shown to be reasonable.

Several options exist when damaged property can be repaired. Some of them are discussed in the following paragraphs. It is imperative that the property owner work with the transportation officer to determine the proper course of action and acquire the necessary funds for repair. The Claims Section does not furnish the funds for repair. In all instances, the matter should be coordinated with the carrier before repairs are made.

b. Carrier's Repair of Damaged Property.

- (1) Damaged property, except classified and protected cargo (sensitive and controlled), as defined in DoD 4500.32R, Military Standard Transportation and Movement Procedures (MILSTAMP), may be repaired by the carrier. When the carrier performs the repairs, the carrier must agree in writing to:
- (a) Restoring the damaged property to the condition it was in when the government released it for shipment.
 - (b) Repairing the damaged property to meet military or contract specifications.
 - (c) Repairing the property promptly.

(d) Returning the repaired property to the releasing activity, or other activity directed to receive it, without undue delay.

(2) Obtain a receipt for the property when it is released to the carrier for repairs. Top secret, secret, confidential, sensitive, or technical supplies or equipment will not be released to a carrier for repairs under any circumstances (see COMDTINST M4610.5, Chapter 17) . When the above conditions have been met, the TDR should be canceled as no claim against the carrier is warranted.

c. Carrier's Replacement of Damaged Property.

(1) The carrier may elect to replace damaged property at no cost to the Government. When the carrier replaces damaged property, it must agree in writing to:

a. Replacing the damaged item with an identical one.

b. Replacing the damaged item promptly.

c. Delivering the replacement item damage free.

(2) When the above conditions have been met, the damaged item should be given to the carrier for salvage or disposition and the TDR should be canceled as no claim action is warranted.

d. Damaged Property that Can Be Repaired. When Coast Guard property is damaged in transit and a claim against the carrier is applicable, the carrier insists upon, and is entitled to receive an itemized statement (breakdown) of the actual repair costs relating to the specified damaged item. The repair cost statement should contain parts, labor, and overhead as separate items.

e. Transportation Charges - Repair Facility. When it is necessary to send damaged property to a repair activity for repair, the transportation cost to and from the repair activity must be added to the freight loss and damage claim. When damaged property is sent to a repair activity for repair, and then sent to a different location, the transportation cost chargeable may not

exceed the transportation charges to the repair activity and back to the original B/L destination location. If replacement is obtained, the record must show the second item was shipped to replace the damaged item. Normally, this charge will not exceed the cost of sending the damaged item to and from the repair facility, provided the replacement is shipped from the facility by the same mode of transportation. This charge is the natural and likely consequence of the carrier's negligence. Transportation charges to and from repair activities must be supported by copies of the applicable B/Ls or carrier's freight bills, as well as a statement showing the repair could not have been made locally at less cost by a government facility or a commercial firm.

f. **Prevention of Loss of Identity at a Repair Facility.**

Because of the administrative costs involved, repair facilities do not normally maintain separate actual repair cost data for each specific item repaired. They can, however, provide the actual itemized repair cost data for repair of in-transit damages when the reporting activity properly marks the damaged property for shipment to the repair facility and shows that separate repair cost data is needed for freight loss and damage claim action. To prevent loss of identity of damaged items and their actual repair cost data at the repair facility, the reporting activity must:

- (1) Notify repair facility transportation personnel and request they alert the IM and maintenance shop or facility of pending shipment of damaged property and the requirement for separate actual repair cost data for claim action against the carrier. Make sure the B/L, shipping document, and reparable tag attached to the damaged property are all annotated to show the office responsible for the TDR, file reference number, B/L number, and show that the actual repair costs applicable to the specific item are required to file a freight loss and damage claim against the carrier.
- (2) The repair facility or maintenance shop is capable of and responsible for providing the actual repair cost statement, when the reporting activity places them on notice that separate actual repair cost data is required.

- (3) If the item loses its identity at the place of repair and another is shipped to replace it, including charges for transportation of the replacement item on the TDR is proper.

g. **Repair Costs Charged by Military Facilities With a Cost Accounting System.** In addition to the direct costs of material and labor, military services must include overhead costs in the amount of the claim. Where a cost accounting system is used, the overhead costs provided by that system will be included in the repair cost statement. If all overhead costs are not provided for by the cost accounting system, repair costs should be computed using the procedures in the following paragraph.

h. **Repair Costs (Direct and Indirect) Charged by Military Facilities Without a Cost Accounting System.** Activities which do not have detailed cost accounting data should compute the cost of repair work as follows:

- (1) For repair work performed by civilians, charge the cost of the regular civilian time plus 42.9 percent. This percentage covers the cost of annual leave, sick leave, holidays, and contributions to employee benefit programs.
- (2) Add the direct cost of any civilian overtime to (1) above, but do not add the 42.9 percent to overtime.
- (3) Add the direct cost of work performed by military personnel to (1) and (2) above. Use the standard daily or hourly rates published in COMDTINST 7310.1E. Multiply the number of hours or days worked times the applicable standard rate, plus 32 percent of the total standard rate for enlisted personnel and 20 percent for officers, as prescribed in COMDTINST 7310.1E. These percentages cover the leave, holidays, and certain other personnel costs not included in the standard rate.
- (4) Increase the sum of (1), (2), and (3) above by 30 percent. This percentage covers costs such as administration, heat, light, and water.
- (5) Increase direct material costs by 3.5 percent as prescribed in COMDTINST 7310.1E for accessorial costs (packing, crating, and handling) of material

issued from stock for use in repair of damaged items, if applicable. Add this amount to the sum of (1), (2), (3), and (4) above.

- (6) If subassembly items or parts recovered incident to repair of the damaged article are salvaged, the carrier is entitled to the salvage value of those recovered items/parts, less any costs to process the salvage. Subtract the salvage value from the total repair costs.

Enclosure (9) is an example of a repair cost statement.

- i. **Property on Which Repairs Will Be Estimated.** It is not necessary to spend money or owe a repair bill to recover the cost of repair (78 American Law Reports (A.L.R.) 905). Use estimated repair costs to settle claims **ONLY** when repairs will not be made, repairs will be delayed due to lack of parts or backlog in the repair facility, or the damaged property must be shipped to another facility for repair.
 - (1) **Property Not To Be Repaired.** Generally, this type of property is shipped to the item or inventory manager for disposal or returned to storage. It eventually may be marked for plant clearance, disposal, or for possible future use. In-transit damages may not necessarily be the cause of final disposition action.
 - (a) Receiving transportation officers should obtain itemized estimates of repair costs as soon as possible. Each estimate is prepared and signed by technically qualified personnel familiar with labor costs, parts, and overhead.
 - (b) The OFA must tell the carrier:
 - 1. The property will not be repaired.
 - 2. The estimated cost of repair was computed by technically qualified personnel.
 - 3. The claim will be settled on the basis of a cost estimate.

- (2) Property Not To Be Immediately Repaired. When actual repair is delayed for an indefinite period, use the estimated repair cost to establish the measure of damage.
- (a) Estimated repair costs are subject to adjustment when the actual repair charges are determined. The transportation officer must obtain and report the actual cost of repairs to the OFA.
 - (b) The OFA informs the carrier:
 - 1. There will be a delay before the property can be repaired.
 - 2. The estimated cost of repair was computed by technically qualified personnel.
 - 3. The government is filing its claim based on the estimate.
 - 4. The carrier should settle the claim based on the estimate, subject to adjustment when actual repair is completed.

Disposition or Salvage of Damaged Property

1. **General.** When a determination has been made that damaged property accepted by the government will be salvaged, the carrier must be notified of the intent to salvage. If release of the property is not restricted (see COMDTINST M4610.5, Chapter 17), it may be offered to the carrier. A carrier is entitled to credit for the salvage value of property not released to it. Such credit does not apply if the recoverable amount of the claim due to shipment under released valuation, is less than the government's actual loss.

When articles are damaged to the point they must be scrapped, the carrier must be allowed credit for the scrap value recovered. If applicable, deduct the cost of processing the salvage for sale from the salvage value.

2. **Procedures.**
 - a. **Disposition of Carrier-Damaged Property.** The policies for disposing or salvaging carrier-damaged property are contained in transportation, materiel, and security directives. Field activities must arrange to dispose of carrier-damaged property according to the directives for handling unserviceable property of the service concerned. The OFA does not furnish disposition instructions or the funds for disposition.
 - b. **Disposition of Carrier-Damaged Property Moving Under Released Rates.** A carrier's liability for loss or damage to government property may be limited to the released valuation cited in the carrier's tariff and on the bill of lading. When the B/L cites reference to "released valuation," field activities must exercise care not to release damaged property to carriers for salvage when the released valuation or amount recoverable from the carrier is less than the actual value of the property.
 - c. **Disposition of Carrier-Damaged Vehicles When Rejected by Receiver.** When a government-owned damaged vehicle is rejected to a carrier because the vehicle is not economically repairable, the carrier is entitled to the property after the government has recovered the full amount of the claim. Accordingly, after the full amount

of the claim has been collected, a Standard Form (SF) 97, United States Government Certificate of Release of a Motor Vehicle must be completed by the holding activity having control over the vehicle. The SF 97 may be obtained from the local reutilization and marketing office.

3. Specialized Shipments.

a. Disposition of Explosives and Other Dangerous Articles.

- (1) General. Damage to explosives and other dangerous articles, especially where damage cannot be readily noted, presents a special situation. Rough handling may require destruction of the entire shipment even though damage to every item may not be visible. In no case are explosives or other dangerous articles to be released to the carrier for salvage.
- (2) Supporting Documentation. TDRs should be supported by:
 - (a) A statement that the carrier was notified and given an opportunity to reinspect the commodity before its destruction. This does not apply to classified material.
 - (b) Evidence (photographs, statements, etc.) showing in detail how the commodity was prepared for shipment (blocked, braced, etc.).
 - (c) A statement from technically qualified personnel and supporting evidence (technical orders, etc.) showing destruction was warranted.
 - (d) A statement that the carrier was aware of:
 1. The nature of the commodity transported.
 2. That the government might have to destroy the entire shipment after delivery if the commodity was handled roughly.
 3. Basis for determining that the commodities were handled roughly.

- (e) When appropriate and practicable, get the carrier's written agreement to the destruction of the commodity or attach a statement that an agreement could not be obtained. Installation commanders, TOs, or freight claim personnel determine the necessity for such a statement or agreement.

DOCUMENTATION REQUIREMENTS

1. **General.** Detailed information on the proper way to complete the TDR is contained in COMDTINST M4610.5, enclosures (16) and (17). The Coast Guard's objective is prompt and equitable settlement of transportation claims. It is imperative the TDR be a comprehensive report of transportation-type discrepancies in shipments of government property and supported by documents sufficient to establish carrier responsibility. The TO/TM must use logic and sound judgment in determining documents required to support the TDR, since the TO/TM is the OFA's primary source of information. The TO/TM must document each TDR, based on its own merits, keeping in mind the OFA requires competent factual information and documented evidence to determine liability, establish the measure of loss or damage, and file an equitable claim against the carrier.
2. **Documentation.**
 - a. **Shortages.** The TDR package should include the following documents, as applicable:
 - (1) Copy of the government or commercial B/L. For commercial air shipments, a copy of both the front and back of the air bill is required.
 - (2) Copy of consignee's copy of the carrier's delivery receipt with discrepancy noted and signed by the carrier's driver and consignee.
 - (3) Copy of shipping document completed to show national stock number (NSN), quantity shipped, material condition, unit cost, and noun or nomenclature as shown by the Federal Supply Catalog. This shipping document may be a DD Form 1348-1, DD Form 250, DD Form 1149, or DD Form 1155.
 - (a) When there is a consolidation of documents in a carton (for example, there are 12 separate requisitions covered by the transportation control number), a completed copy of each document in the consolidation is required to establish the actual loss.

- (b) When property is shipped in reparable (F) condition, a reparable value statement is required, citing the actual preshipment value.
- (c) For prepaid free on board (FOB) origin shipments, a copy of the contractor's paid invoice is required. Procurement should instruct the finance officer to pay for all freight tendered to the carrier at origin. Then, if there is an in-transit loss, a TDR should be initiated and forwarded to the OFA for claim action against the carrier.
- (4) Copy of a document showing the consignee's supply records have been researched for confirmation of whether or not the property checking short has been received. If ultimate consignee is overseas, they should be contacted for confirmation of whether or not shipment has been received and a copy of such reply should be included in the TDR package.
- (5) A copy of the debit document showing how many items were received on a partial delivery (for example, one box of two received).
- (6) A copy of the shipper's reply to the TDR (Request for Information) confirming whether or not shipment was shipped as billed and condition of property when tendered to the carrier.
- (7) Copy of tally-out and tally-in records for truckload shipment when carrier is determined responsible for the shortage.
- (8) Copy of tally-out, tally-in, or truck loading/unloading manifest for any shipment considered to be shipper load and count and/or consignee unload.
- (9) For concealed loss or clear delivery receipt, signed affidavit(s) by person(s) who first discovered the loss, showing time, place, circumstances of delivery, and explanation as to why shortage was not noted at time of delivery.
- (10) For United Parcel Service (UPS) shipments, a copy of the UPS pickup record and the UPS tracer and loss and damage investigation (LDI).

- (11) For Roadway Package Service (RPS) shipments, include RPS's bar code number or a copy of the shipment pickup/manifest number. The carrier will not honor claims failing to cite this number.
 - (12) For Federal Express (FEDEX) shipments, include the Federal Express bar code number or a copy of the shipment pickup/manifest number. The carrier will not honor claims failing to cite this number.
 - (13) For commercial forms and procedures for small domestic freight shipments, a copy of the commercial B/L and SF 1034 paid by the shipper for transportation is required.
- b. **Damages**. The TDR package should include the following documents, as applicable:
- (1) Copy of the government or commercial B/L. For commercial air shipments, a copy of both the front and back of the air bill is required.
 - (2) Copy of consignee's copy of the carrier's delivery receipt with discrepancy noted and signed by the carrier's driver and consignee.
 - (3) Copy of shipping document completed to show national stock number (NSN), quantity shipped, material condition, unit cost, and noun or nomenclature as shown by the Federal Supply Catalog. This shipping document may be a DD Form 1348-1, DD Form 250, DD Form 1149, or DD Form 1155.
 - (a) For prepaid free on board (FOB) origin shipments, a copy of the contractor's paid invoice is required. Procurement should instruct the finance officer to pay for all freight tendered to the carrier at origin. Then, if there is an in-transit damage, a TDR should be initiated and forwarded to the OFA for claim action against the carrier.
 - (b) When property is shipped in reparable (F) condition, a reparable value statement is required, citing the actual preshipment value.

- (4) Copy of the carrier's inspection report signed by the carrier's representative and the consignee. If the carrier declined inspection of the damage property, copy of the government inspection performed, signed and dated by a technically qualified person.
- (5) Original photographs or color copies of photographs made of the damaged property, showing the carrier's name, B/L number, date shipped, transportation control number (if applicable), and NSN to identify the property.
- (6) Original and one copy of the itemized actual or estimated repair cost statement, signed and dated by a technically qualified person. For commercial repair, two copies of the contractor's paid invoice.
- (7) Appropriation to be credited for repair costs.
- (8) Copy of carrier's receipt for property released to it for salvage, showing the preshipment value as the amount of the government's loss. The receipt must be signed by the carrier or its authorized agent.
- (9) Copy of official accident report initiated by law enforcement personnel for loss or damage due to aircraft, rail, or highway accidents.
- (10) If damaged property was sent to a repair facility, copy of the B/L or freight bills for transportation cost to and from the repair facility.
- (11) For concealed damage or clear delivery receipt, signed affidavit(s) by person(s) who first discovered the damage, showing time, place, circumstances of delivery, and explanation as to why shortage was not noted at time of delivery. If the property was moved from the original delivery point, also include signed and dated statement(s) or affidavit(s) by person(s) who moved the property, showing distance, method of movement, time, and circumstances of movement.
- (12) For Roadway Package Service (RPS) shipments, include RPS's bar code number or a copy of the shipment pickup/manifest number. The carrier will not honor

claims failing to cite this number.

- (13) For Federal Express (FEDEX) shipments, include the Federal Express bar code number or a copy of the shipment pickup/manifest number. The carrier will not honor claims failing to cite this number.
- (14) For United Parcel Service (UPS) shipments, a copy of the UPS pickup record and the UPS tracer and loss and damage investigation (LDI).
- (15) For commercial forms and procedures for small domestic freight shipments, a copy of the commercial B/L and SF 1034 paid by the shipper for transportation is required.
- (16) Copy of the shipper's reply to TDR (Request for Information), describing conditions under which loading, blocking, and bracing took place, the adequacy of those actions, and who performed them. If applicable, shipper must shown if packing, loading, blocking, bracing were performed according to the terms of the contract, the Rules of the Association of American Railroads or American Trucking Associations, and whether or not loading was inspected by the carrier.

DISTRIBUTION OF THE TDR FOR CLAIM ACTION

1. **Distribution Guidelines.** This enclosure and Table 1 furnish instructions and requirements for distribution of the original TDR package for claim action when the carrier is responsible for in-transit loss or damage.
2. **Distribution When U.S. Coast Guard Finance Center (FINCEN) is the OFA.** When the TO/TM finds the carrier responsible for loss or damage and Coast Guard funds are cited for transportation on the B/L, the TO/TM sends the original TDR, documented as required by Chapter 4, to CO (OGC), U.S. Coast Guard Finance Center, 1430A Kristina Way, Chesapeake, VA 23326. FINCEN may also be the OFA if Coast Guard funds are not charged for transportation on the B/L. Before submission to the OFA, cite the appropriation or fund to be credited for repair costs.
3. **Distribution When FINCEN is not the OFA.** Generally, the OFA is the same office as the disbursing office shown in the "Charges To Be Billed To" block of the B/L. Transportation funds of the service that funded the shipment are shown in the "Appropriation Chargeable" block of the government B/L. The TO/TM documents the TDR in accordance with Enclosure 4 and sends the original TDR to the appropriate OFA.
 - (a) **General Services Administration (GSA) Shipments.** When the GBL cites GSA (47) funds, send the original TDR package to the GSA National Customer Service Center (6FRT), 1500 East Bannister Road, Kansas City, MO 64131.
 - (b) **Department of Defense (DoD) Shipments.** Follow the service and agency distribution instructions contained in DoD 4500.9-R, Defense Transportation Regulation, Part II, Cargo Movement, April 1996. Enclosure (3) contains those instructions. **However, send the original TDR package to CO (OGC), US Coast Guard Finance Center, 1430 A Kristina Way, Chesapeake, VA 23326.**
4. **Reporting Activity File Copies of TDRs.** The reporting activity must maintain a copy of all TDRs and supporting documents for future reference. Documents will be maintained and disposed of in accordance Coast Guard file retention directives.

GLOSSARY

BURDEN OF PROOF: The burden is on the government to prove the facts of carrier responsibility for loss or damage, the amount, and extent of damages. These facts must be shown with reasonable certainty.

CLEAR DELIVERY RECEIPT: A receipt given to a carrier, which shows a shipment was delivered complete or in apparent good order.

CONCEALED LOSS/DAMAGE: Loss or damage to the contents of a package that is not evident when delivered by the carrier, but is later discovered when the consignee opens the package, checks its contents, and discovers the loss or damage.

DEADHEAD: Transportation by a commercial carrier on a nonrevenue freight bill.

DISCREPANCY: "Discrepancy," "transportation-type discrepancy," "discrepancy notation," "discrepancy in shipment," and "bad-order delivery," denote a variation in quantity or condition of materiel received from that shown on the bill of lading or governing transportation document.

FREE ASTRAY: Used by commercial carriers to designate and describe misdirected freight that is being transported at the carrier's expense to the proper consignee.

FREIGHT LOSS/DAMAGE CLAIM (FLDC): "Freight claim" or "claim" refers to Standard Form (SF) 362, U.S. Government Freight Loss/Damage Claim. This form gives the factual data of an in-transit loss, damage, or destruction of Coast Guard property in the custody of a commercial carrier. It is the document used by claims offices to establish claim against the carrier.

INCIDENTAL DAMAGES: Those damages which naturally and proximately arise from the loss of or injury to property in the possession of the carrier for transportation. This includes expenses reasonably and necessarily incurred by the government in an effort to preserve the property or mitigate the amount of loss.

OFFICE OF FINAL ACTION (OFA). The OFA is responsible for filing the claim against the carrier. The OFA must attempt to develop TDRs received, which are incomplete or inadequately documented, or require further investigation or evidence from the consignor or consignee. To that end, the OFA will follow up with the reporting activity to obtain the necessary documentation to establish a prima facie case of carrier liability before filing the claim with the carrier. The OFA reserves the right to ask for help from installation commanders, TOs, service transportation staffs or major commands when reporting activities fail to provide timely replies to requests for factual information or documentary evidence required to support or defend claim action.

PRIMA FACIE: At first appearance, before investigation.

PRIMA FACIE EVIDENCE: Evidence sufficient to establish a fact, or to raise a presumption of fact, unless rebutted.

PROPERTY: For the purpose of this regulation, "public property," "government property," "United States Coast Guard property," "military property," or "property" includes all government property under the control of the Coast Guard. The term "property" includes materiel or goods acquired by purchase, lease, rental, or any other method.

PROXIMATE CAUSE OF DAMAGE: Proximate cause is defined as the cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage and without which the loss or damage would not have occurred. It is also defined as the primary moving cause, or the predominating cause, from which the injury follows as a natural, direct, and immediate consequence and, without which, it would not have occurred.

Example of Pre-Shipment Value Statement

VALUE STATEMENT

Item:	Clock TD 1251/U
NSN:	6645-01-063-0399EX
Requisition Number:	Z50100-6075-0739
BL Number:	T0692473, 08/24/95
Date Purchased:	1989
Manufacturer:	Ace Industries, Inc.
Original Acquisition Cost:	\$ 81,314.18
Replacement Cost 1995:	\$107,900.50
Life Expectancy:	20 years
(published in [give source])	
Pre-shipment Condition:	Repairable
Current Need to Coast Guard:	Required
Standard Repair Cost 1995:	\$ 4,596.00

Replacement cost	\$107,900.50
Depreciation	
6 years @ \$5,395.03 per year	- 32,370.18
Value after depreciation	75,530.32
Standard repair cost 1995	- 4,596.00
Pre-shipment value	\$ 70,934.32

Date:

[Technically Qualified Person]
[Title]
[Location]

**Example of Repair Costs (Direct and Indirect) by Military
Facility without a Cost Accounting System**

Assume a repair job required 40 hours of regular civilian time plus 10 hours overtime. Overtime was authorized because the item was required to support a priority mission. The regular civilian rate is \$15.50 per hours. Military apprentices (E-1) worked 10 hours at the standard rate of \$9.65 per hour plus 32 percent of the total standard rate. Material (itemized) used in the repair work cost the government \$675.50. Some parts removed were salvaged at the local DRMO; salvage value \$52.75.

REPAIR COST STATEMENT

Item: Value:	Aircraft Leading Edge \$49,750.00
Civilian labor 40 hours @ \$15.50/hr	\$ 620.00
Civilian indirect labor cost	
42.9 percent of \$620.00	265.98
Civilian overtime 10 hours @ \$23.25/hr	232.50
Military labor 10 hours @ \$9.65/hr	96.50
Military indirect labor costs	
32 percent of \$96.50	30.88
Total Labor Costs	\$1,245.86
Overhead	
30 percent of \$1,245.86	373.76
Direct material costs (must be itemized)	675.50
Accessorial Cost	
3.5 percent of \$675.50	23.64
Salvage value of parts removed	52.75
Total Repair Cost	\$2,266.01

Date:

[Technically Qualified Person]
[Title]
[Location]

TABLE 1
Initiating and Distributing the TDR when Carrier is Responsible for Loss or Damage and Claim Action is Required by the OFA

R u l e	A	B	C	D	E
	If shipment originated from	is received by	and funds charged for transportation the BL are	then the TDR will be initiated by	and original TDR and supporting documentation will be sent to
1	Coast Guard	Coast Guard	Coast Guard	receiving activity TO	CO (OGC) Chesapeake
2			other than Coast Guard		disbursing office shown on the BL
3		DoD Activity	Coast Guard		CO (OGC) Chesapeake
4			other than Coast Guard		disbursing office shown on the B/L
5	DoD Activity	Coast Guard	Coast Guard		CO (OGC) Chesapeake
6			other than Coast Guard		CO (OGC) Chesapeake
7	Coast Guard	civilian agency or commercial facility under government contract except GSA	Coast Guard	shipping activity TO, unless receiving activity has a government representative	CO (OGC) Chesapeake
8			other than Coast Guard		CO (OGC) Chesapeake
9	civilian agency or commercial facility under government contract except GSA	Coast Guard	Coast Guard	receiving activity TO	CO (OGC) Chesapeake
10			other than Coast Guard		disbursing office shown on the BL
11	Coast Guard	commercial activity not under government contract	Coast Guard	shipping activity TO	CO (OGC) Chesapeake
12			other than Coast Guard	activity directing shipment TO	disbursing office shown on the BL
13	CONUS terminals	CONUS terminals	Coast Guard	terminal TO	CO (OGC) Chesapeake
14		Coast Guard		receiving activity TO	GSA NCSC Kansas City
15	Coast Guard	GSA receiving activity			
16	GSA	receiving activity TO			
17	commercial activity not under government contract (FOB origin terms)	Coast Guard	GSA	CO (OGC) Chesapeake	
18			Coast Guard		

